BRUNEI REPORTS

BONG SAU FEI v. CHONG CHUI LIEN & ANOR.

[O.C.J. (Roberts C.J.) October 6, 1984]

[Bandar Seri Begawan — Petition No. 1 of 1984]

Family Law — Divorce — Jurisdiction of High Court — Law applicable — Marriage Enactment (Cap. 76) — Supreme Court Enactment, 1963, ss. 2(4) & 6 — Supreme Court (Amendment) Enactment 1977 — Superior Courts (Authorization) Enactment (Cap. 5) — Sarawak, North Borneo and Brunei (Courts) Order in Council 1951 — Courts Enactment, 1908, ss. 4 & 5 — Brunei High Court (Civil Procedure) Rules, 1970, r. 4 — Chinese Marriage Enactment 1955 (No. 6 of 1955) — Application of Laws Enactment (Cap. 2), s. 2 — Matrimonial Causes Act 1950, ss. 10 & 11 — Interpretation and General Clauses Enactment, 1959, ss. 13(b) & 50.

The questions for ruling in this divorce petition are whether or not the High Court of Brunei has jurisdiction to grant a decree of dissolution of marriage and, if it has, what law it should apply. The petitioner petitions for divorce on the ground of the adultery of his wife the respondent with the co-respondent. The petitioner and the respondent are of Chinese race and are domiciled and resident in Brunei. Their marriage was a civil ceremony performed under the Marriage Enactment (Cap. 76) and took place in Brunei on January 24, 1981 in the office of the Marriage Registrar at Bandar Seri Begawan.

Held : (1) the High Court of Brunei has jurisdiction, by virtue of sections 4 and 5 of the Courts Enactment, 1908, to dissolve or annul marriages;

(2) the Matrimonial Causes Act, 1950, is a statute of general application and that it has been in force in the State since April 21, 1951.

Cases referred to :

(1) *Brooke* v. *Brooke* [1950] A.C. 313.
(2) *Lim Siew Yun* v. *Soong Ah Kaw* [1960-63] S.C.R. 105.
(3) *Toh Siew Cheng* v. *Lee Kim Chung* [1960-63] S.C.R. 194.
(4) *Teo Thian Soo* v. *Abang Othman* [1951] S.C.R.1.
(5) *Shaik Sahied bin Abdullah Bajerai* v. *Sockalingam Chettiar* [1933] A.C. 342; [1933] M.L.J. 81.
(6) *Quan Yick* v. *Hinds* (1905) 2 C.L.R. 345.
(7) *Jex* v. *McKinney* (1889) 14 App. Cas. 77.

DIVORCE PETITION.

T.C. Chan for the petitioner.
F.N. Law for the respondent.
David Teo for the co-respondent.

Cur. Adv. Vult.

Roberts C.J.: *Preliminary* — Bong Sau Fei has petitioned for divorce on the ground of the adultery of his wife, the respondent, with the co-respondent.

The petitioner and respondent are both of Chinese race. Both are domiciled and resident in Brunei. The marriage, which was a civil ceremony performed under the Marriage Enactment (Cap. 76), took place in Brunei on January 24, 1981, in the office of the Marriage Registrar at Bandar Seri Begawan.

The word "marriage" is defined in section 2 of Cap. 76 as a "marriage as understood by English law, that is to say the voluntary union for life, or until the marriage is dissolved by a court of competent jurisdiction, of one man with one woman to the exclusion of all others." Such a marriage is therefore monogamous and of a nature capable of dissolution under English law, unlike customary marriages which are potentially polygamous.

I am asked, without considering the merits of the petition, to rule as to whether or not the High Court of Brunei has jurisdiction to grant a decree of dissolution of marriage and, if it has, what law it should apply.

In addition to counsel appearing for the petitioner and respondent, I had the advantage of hearing Mr. Ivan Leong, who appeared, on behalf of the Minister of Law, as *amicus curiae.*

Authority for High Court's Jurisdiction

A tortuous path has to be followed to ascertain the present jurisdiction of this court.

Section 6(1) of the Supreme Court Enactment, 1963, provides that the High Court "shall exercise original and appellate criminal and civil jurisdiction."

By section 6(5) of the same Enactment, its jurisdiction shall be "that jurisdiction, power and authority which was formerly vested in the High Court by section 2(4) of the Supreme Court Enactment, 1963."

The latter section [2(4)] which was repealed by the Supreme Court (Amendment) Enactment 1977, conferred on the High Court "that jurisdiction, power and authority vested immediately before the coming into force of this Enactment, in the High Court of Sarawak, North Borneo and Brunei, so far as such jurisdiction derived from any law in force in Brunei."

The Superior Courts (Authorization) Enactment (Cap. 5) which came into force on November

14, 1951, provided for the abolition of the Court of the Resident (the older name for the High Court of Brunei) and its replacement by such other Court as H.M. might establish by order in Council, "with such original and appellate jurisdiction and such powers and duties as may be determined by or in pursuance of any order of H.M. in Council."

Section 11 of the Sarawak, North Borneo and Brunei (Courts) Order in Council 1951, conferred on the new High Court, created thereby "all jurisdiction, power and authority vested immediately before the appointed day in the present Superior Courts," one of which was the High Court of Brunei.

The jurisdiction of this Court must therefore be found in the law in force at the time when the combined court of Sarawak, North Borneo and Brunei was formed in 1951.

This was contained in the Courts Enactment, 1908, which must therefore still be regarded as the source of the jurisdiction of the High Court of Brunei.

Section 4(1) provides that the Court of the Resident "shall have and exercise such original and appellate jurisdiction in civil and criminal matters as is hereafter provided."

By section 5(1) "The said Court shall, subject to the provisions of this and of all other Enactments for the time being in force have jurisdiction in all suits, matters and questions of a civil nature, excepting only that nothing herein contained shall be deemed to authorize any Court in the State to dissolve or annul a marriage lawfully solemnized between Christians in the United Kingdom of Great Britain and Ireland or in any British Colony Protectorate or Possession."

Decisions on Divorce Jurisdiction

The general effect of sections 4(1) and 5(1) was considered by the Privy Council in *Brooke* v. *Brooke*,[1] At p. 325 Lord Normand commented:

"In both subsections the words "shall have jurisdiction in" are equivalent to "shall be competent to entertain."

Three cases were cited to me in which Brunei courts have refused to grant decrees of divorce.

In *Leng* v. *Yaw*, heard at Kuala Belait on October 1, 1956, Smith, Acting C.J., refused to grant a divorce to a Chinese petitioner who had been married to another Chinese in a ceremony in a Roman Catholic Church in Brunei in 1952. He commented –

"I am of the opinion that I have no jurisdiction to entertain this petition since there is no local enactment conferring jurisdiction on the High Court to grant a decree of dissolution of marriage in the case of Christian marriages. The relevant law in England is to be found in Part VIII of the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo 5 Cap. 49, as amended. I do not, however, consider that that Act is a statute of general application within the meaning of the Application of Laws Enactment."

In *Ho* v. *Liew*, heard at Kuala Belait in 1957, Sir Earnest Williams C.J. refused to grant a decree dissolving a marriage; between two Chinese, who had been married in Brunei in accordance with Chinese custom. Before holding that "under the laws of Brunei no provision is made for divorce where the parties are married under Chinese customary law," the Chief Justice commented as follows on the general question of the Court's jurisdiction:

"There was no argument adduced before me as to whether the Court had jurisdiction in the case. The law regarding divorce in Brunei is obscure. The Religious Council, State Custom and Khatis Courts Enactment 1955, (No. 20 of 1955), Part VI, deals with marriage and divorce but only applies to parties which profess the Islamic religion and where the marriage is solemnized in accordance with Muslim law. It is, therefore, inapplicable to the present case. Section 5(1) of the Brunei Courts Enactment, 1908, confers jurisdiction on Brunei Courts in all suits, matters and questions of a civil nature "excepting only that nothing herein contained shall be deemed to authorize any Court in the State to annul a marriage lawfully solemnised between Christians in the United Kingdom or Great Britain and Ireland or in any British Colony or Protectorate or Possession". This jurisdiction was continued by section 11(1) of the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951.

It is perhaps arguable that the Matrimonial Causes Act, 1950, is applicable in Brunei on the ground that it is a Statute of general application and so is law here. I am not prepared to concede that it does apply at least without hearing further argument. That, however, in my opinion does not assist in the case under consideration. If that Act applies then the Courts of Brunei should give relief on the same principles as the Court in England gives relief in matrimonial proceedings: It is well settled law that in England the Divorce Court will not grant any relief in respect of a polygamous marriage. The Matrimonial Causes Act, 1950, would be applicable to marriages contracted under the Marriage Enactment (C. 76) i.e. marriages solemnized by a minister of religion or by a Marriage Registrar. Under section 1(2), the Marriage Enactment does not apply to marriages contracted according to the usage of. . . . . persons governed by their own laws or customs of marriage which are recognized by Brunei law to be valid or effective . . . A Chinese customary marriage would, I

consider, be valid under Brunei law. Such a marriage, in my opinion, would be considered as a polygamous rather than a monogamous marriage in the State of Brunei. True there is no evidence before me to that effect. In the former Straits Settlements the law permitted a system of polygamy among persons of Chinese race irrespective of their nationality or place of domicile. [See *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi.* [1956] M.L.J. 257 where monogamous and polygamous marriages are distinguished under Straits Settlements Law]."

In *Lim* v. *Soong*[2] Sir John Ainley C.J. sitting at Kuala Belait on November 10, 1962, held that the High Court had no jurisdiction to grant a decree of divorce in the case of a Chinese customary marriage.

After referring to the cases of *Leng* v. *Yaw* and *Ho* v. *Liew*, he commented:

"The High Court of Brunei has no doubt jurisdiction to grant any remedy, and to uphold any right, which has been given to the litigant by the Laws of Brunei, or by any law applied to Brunei. But the right to obtain at the hands of the High Court, or at the hands of any other court, the dissolution of a marriage celebrated according to Chinese custom has never been given by any law enacted in Brunei or by any law applied to Brunei. It may be doubted whether the English law of divorce applies to Brunei, but if it does so apply it cannot, I think, apply to marriages celebrated by Chinese custom for, though the matter has never been fully argued before this Court, I do not think that Chinese marriages celebrated by Chinese custom in these territories can be regarded as monogamous marriages."

To summarize the effect of these three decisions, which are of co-ordinate jurisdiction and therefore do not bind me, *Ho* v. *Liew* and *Lim* v. *Soong* both dealt with Chinese customary marriages celebrated under the Marriage Enactment.

In *Ho* v. *Liew* the Chief Justice expressed no view as to the jurisdiction conferred by the 1908 Enactment, and commented that "it is perhaps arguable that the Matrimonial Causes Act 1950 is applicable in Brunei on the ground that it is a statute of general application."

In *Lim* v. *Soong*, the Chief Justice noted in passing "It may be doubted whether the English law of divorce applies to Brunei."

Both comments, though entitled to respect, were *obiter* and given without the benefit of argument.

In *Leng* v. *Yaw*, however, the Acting C.J. found that there was no local Enactment conferring jurisdiction on the High Court to grant a decree of dissolution of marriage.

His decision was based on his view that Part VIII of the 1925 Supreme Court of Judicature (Consolidation) Act was not a statute of general application, though he gives no reason for this conclusion.

The Acting Chief Justice does not appear to have considered the provisions of the 1908 Enactment and seems to have rolled together the two questions of whether there is jurisdiction and, if so, what law is applicable, by deciding that, because the 1925 Act, which sets out the grounds for divorce, was not a statute of general application, the High Court could not have any jurisdiction in matrimonial causes.

There has, therefore, been no case cited to me in which this Court, or a Court superior to it, has firmly decided that section 5 of the 1908 Enactment does not confer jurisdiction on the High Court of Brunei in Matrimonial Causes, only references expressing doubt that it does.

Effect of section 5 of 1908 Enactment

I am satisfied that the phrase, in section 5(i) of the 1908 Enactment, "all suits, matters and questions of a civil nature" is wide enough to encompass matrimonial causes, which are of a civil (as opposed to criminal) nature.

The presence in that subsection of an exclusion of jurisdiction in relation to certain kinds of marriage, reinforces this view, since it would be unnecessary to exclude some kinds of matrimonial suit unless others were thought to have been included by the earlier words of the subsection.

The subsection excludes jurisdiction to dissolve marriages solemnized between Christians in the United Kingdom or in any British Colony, Protectorate or Possession.

I do not think that this rather oddly worded provision is intended to exclude the jurisdiction of the Brunei Court in relation to marriages contracted within the State itself. This would, after all, have been likely to constitute the great majority of petitions before the Residents Court and, if it had been intended to exclude them from the Court's jurisdiction, the section would surely have said so in terms.

In any event, on a strict interpretation of the

exclusionary phrase, I do not think that Brunei is included in it. Brunei was never a British Colony or Possession. Nor do I think that it would properly have been described as a "Protectorate," rather as a "Protected State."

Para. 806 of Volume 6 of the Fourth Edition of *Halsbury's* Laws states that a territory outside H.M.'s dominions, for whose international relations H.M.G. is responsible is styled a "protectorate" or "protected state," adding that although there is no fixed line of demarcation between the two categories, a protected state enjoys greater autonomy in that its internal administration is carried on in the name of the local ruler. This has always been the case in Brunei. Furthermore, at para. 1167 of the same volume, Brunei is described as a "protected state."

I therefore find that the High Court of Brunei has jurisdiction, by virtue of sections 4 and 5 of the 1908 Enactment, to dissolve or annul marriages.

For what it is worth, and I placed no weight upon it, this conclusion seems to have been shared by those who drafted the Sarawak, North Borneo and Brunei High Court (Fees) Rules, which came into force on March 1, 1954 and, in spite of its title, applied only to Brunei. The Schedule to those Rules contains a section headed "Matrimonial Causes" with charges prescribed for filing a petition for dissolution of marriage and for other matrimonial proceedings.

And Rule 4 of the Brunei High Court (Civil Procedure) Rules, 1970, provides that those rules shall not affect the practice and procedure of the court prescribed by any law for the time being in force relating to "causes or matters in its Admiralty or Divorce jurisdiction."

The decisions in *Ho* v. *Liew* and *Lim* v. *Soong* make it clear that this Court has no jurisdiction to dissolve Chinese customary marriages. The jurisdiction conferred by the 1908 Enactment must therefore be deemed to be limited to the dissolution or annulment only of marriages contracted in Brunei under the Marriage Enactment (Cap.76).

What Law Should Apply?

Having reached the conclusion that the High Court of Brunei has jurisdiction in matrimonial causes, I must decide whether there is any law in force in the state on this subject which it can apply.

It is conceded that there is no Brunei Enactment governing the dissolution of marriages contracted under Cap. 76, though the Religious Council, State Custom and Kathis Courts Enactment, 1955 (No. 20 of 1955) provides for the divorce, in accordance with Muslim law, of persons who profess the Islamic religion and whose marriage was solemnized in accordance with Muslim law.

The Chinese Marriage Enactment, 1955, (No. 6 of 1955) makes provision for the registration of persons married by Chinese law or custom. The Enactment prescribes penalties for adultery and other matrimonial offences but says nothing about the dissolution of such marriages.

The only source of law, therefore, is section 2 of the Application of Laws Enactment (Cap. 2):

> "Subject to the provisions of this Enactment and save in so far as other provision has been or may hereafter be made by any written law in force in the State, the Common Law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of the Enactment, shall be in force in the State:
>
> Provided that the said common law, doctrines of equity and statutes of general application shall be in force in the State so far only as the circumstances of the State and of its inhabitants permit and subject to such qualifications as local circumstances and native customs render necessary."

Cap.2 came into force on April 25, 1951, and it is agreed by all parties that, if the conditions of section 2 are satisfied, the relevant statute in force on that date was the Matrimonial Causes Act, 1950 (the "1950 Act"), which came into force on January 1, 1951.

I note in passing that, if the 1950 Act is in force in Brunei, so are the Matrimonial Causes Rules, 1950, which also came into force on January 1, 1951.

By section 13(b) of the Interpretation and General Clauses Enactment, 1959, (No. 5 of 1959), a reference in any written law includes a reference to any subsidiary legislation made thereunder. This paragraph does not deal with Acts of Parliament, which are excluded from the definition of written law, but I consider that the same approach should be adopted by analogy.

General provisions in the nature of section 2

of Cap.2 have been part of the law of many territories and have often given rise to considerable difficulty. I intend to approach the question of whether or not, and if so the extent to which, the 1950 Act is in force in Brunei by asking three questions –

(1) Is the 1950 Act a "statute of general application"?

(2) Do the "circumstances of the State and of its inhabitants permit" it to be in force? (The "suitability" test).

(3) Do local circumstances and native customs require any "qualification" of it?

Is the 1950 Act a Statute of general application

It was suggested by counsel that I should decide this by reference to the extent to which the 1950 Act would be of general application in Brunei and that as it would cover only a small proportion of the inhabitants of the State, it could not be said to be of general application.

I do not agree with this contention, which runs counter to all the cases to which I have been referred; these proceed on the basis that it is the general applicability in England of the statute which must be considered. Only if it is of such a nature in its country of origin is it a candidate for absorption into the law of the State by virtue of Cap.2.

In determining whether the 1950 Act is a statute of general application, I follow, as I am bound to do, the approach set out by Ainley C.J. giving the judgment of the Court of Appeal for Sarawak, North Borneo and Brunei in *Toh* v. *Lee*.[3]

The question at issue was whether the Fire Prevention (Metropolis) Act 1774 was in force in Sarawak, as a statute of general application, by virtue of section 2 of the Sarawak Application of Laws Ordinance, which was in similar terms to Cap. 2. At page 197, Ainley C.J. commented:

"I think that the clear intention of Section 2 of the Application of Laws Ordinance is that, subject to the proviso and subject to local law, the statute law of England which affects the English public at large, and is not local or personal in its application, shall be the law of Sarawak. Section 86 is such statute law and therefore applies in Sarawak. It is said, however, that there are circumstances in Sarawak which would prevent the application of that section. This has not been demonstrated to my satisfaction. In Sarawak or in England men, women and children live in towns and villages and there must be some law governing liability for fire."

Some assistance may be gained from instances in which the Courts in Brunei have decided that certain English statutes are, or are not, of general application.

In *Jafar* v. *Sadiah* (Civil Appeal No. 1 of 1978) the Court of Appeal of Brunei decided that the Fatal Accidents Acts 1846-1908 do apply.

In *Chen & Ors.* v. *Chee* (Civil Suit 57 of 1981, this Court decided that the Law Reform (Miscellaneous Provisions) Act 1934 applies.

In *Swee* v. *Lum* (Suit 175 of 1981), Rhind J. ruled that the Arbitration Act 1950 is a statute of general application in force in Brunei.

In Civil Suit No. 49 of 1976, Leonard J. decided that the Hire Purchase Act, 1938, is not applicable in Brunei.

In *Teo Thian Soo* v. *Abang Othman*[4] Hedges C.J. ruled that the Crown Proceedings Act 1947 was not a statute of general application.

It is not easy to derive any clear principles as to what a statute of general application is. The approach adopted appears to be to assume that an English statute is of general application, unless it is of such a nature as to withdraw it from this category.

I suggest that among the reasons for deciding that a statute is not of general application are that it is of a local personal or temporary nature, or that it is limited in scope (*e.g.* a fiscal or revenue measure) or that it deals with a specific institution (*e.g.* an electricity board or an art gallery) or that it is concerned with a limited class of persons (like the Ecclesiastical Commissioners, or those who work in the coal mining industry).

The 1950 Act applied generally throughout England and does not fail for any of the reasons suggested above. I therefore find that it is a statute of general application.

"Suitability"

The next question is whether the circumstances of Brunei permit the 1950 Act to be imported.

I take the proviso to mean that a statute which is one of general application and would otherwise be part of the law of the state, will nevertheless not

be so received unless it is "suitable" to the circumstances of the state.

It was this approach, as I understand it, which impelled the Privy Council, in *Shaik Sahied bin Abdullah Bajerai* v. *Sockalingam Chettiar*[5] to decide that the English Moneylenders Acts were "unsuitable and impossible of performance in the East."

Similarly, in *Quan Yick* v. *Hinds*,[6] the High Court of Australia refused to apply the English Lotteries Act 1823 as part of the law of New South Wales, because it was not suitable to the conditions of the Colony.

For the same reason, the Privy Council ruled in *Jex* v. *McKinney*[7] that, although the Mortmain Act of 1735 was included in the description of laws introduced into the Colony of British Honduras, its provisions did not satisfy the condition of applicability to the Colony – *i.e.* that it was not an Act which could reasonably be applied. As Lord Hobhouse observed at p.81 "We are brought back to the question of whether the statute of George II is suitable to a young English colony in a new country."

It was argued that the 1950 Act was unsuitable for Brunei because it would give a prospect of divorce to only part of the community. This is correct, but the situation already applies. The Act would at least reduce the number of those for whom no matrimonial relief is available.

It was suggested that it would cause practical difficulties if the 1950 Act, which was replaced in England some years ago, were to apply, since it is out of date. I do not see these difficulties as significant. Text books dealing with the 1950 Act are no doubt readily available. The Supreme Court Library has some.

Nor would I find it easy to conclude that a statute providing for divorce would be regarded with distaste by the community, since the great majority of its members already have such relief available to them, under Islamic law.

Counsel drew my attention to various passages in the 1950 Act which, it was said, made little sense in the context of Brunei and so must render the Act unsuitable. He went so far as to urge that if any provision of the Act was inappropriate to Brunei, the Act must be excluded as unsuitable.

In support of this proposition, he relied on *Shaik Sahied* v. *Sockalingam Chettiar* in which the Privy Council decided that the English Moneylenders Act 1927 did not apply in Singapore because it formed no part of English "mercantile law," which was applied by the Civil Law Ordinance of Singapore.

Lord Atkin, however, expressed the view *(obiter)* that, in any event, the Moneylenders Act would not have been suitable for extension to Singapore and commented:

> "The Act must be judged as a whole, and if it is found to be restricted to regulation of activities in England and not to be capable of general application, it is not within the scope of the Ordinance at all. To take one or two sections of such an Act, divorced from these context, is to apply a new law, which is not the law of England, and so abstracted might never have been introduced into England at all."

I do not construe this passage as intending to exclude an English Act, otherwise suitable in all respects, because some of its minor features may require a degree of modification to fit local circumstances.

And even if it did, that decision must be read subject to section 50 of the Brunei Interpretation and General Clauses Ordinance (No. 5 of 1959) which specifically empowers the Sultan in Council, in relation to any statute of general application which applies by virtue of Cap.2, to pass regulations, not inconsistent with the statute, "making such modifications as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to make it applicable to the circumstances of the State."

Even the ingenuity of counsel could find little in the 1950 Act which does not fit the circumstances of Brunei.

The definition of "care and treatment" in section 1(2) of the 1950 Act contains references to institutions and orders which are not appropriate to Brunei. Section 50 of the Enactment (No. 5 of 1959) would surely permit these references to be replaced by appropriate ones to the Lunacy Enactment (Cap. 48) which specifies institutions for the reception and treatment of persons of unsound mind.

Sections 10 and 11 of the 1950 Act refer to the King's Proctor, an official who does not exist in the State at present. I see no difficulty in

appointing a public servant to discharge the duties which the Act lays upon the King's Proctor; if necessary, his title can be altered by regulations under section 50 of Enactment No. 5 of 1959.

At a later stage in the submissions by counsel, reference was made to the difficulties which might arise if the Maintenance Orders Act, 1950, were held to be a statute of general application. I did not hear full argument on the matter and it is not necessary to my decision.

Prima facie, and I stress, that my opinion is *obiter* and tentative, this Act is possibly not one of general application and certainly not suitable for Brunei, since it deals with the enforcement of orders for the custody and maintenance of children as between different parts of the United Kingdom.

The absence from Brunei law of that Act would, in any event, be of no significance, since all the necessary provisions for the grant of ancilliary relief are contained in the Matrimonial Causes Rules, 1950, which, as I have found, are incorporated in the law of Brunei in company with the present Act.

Qualification

The third question is whether the Act should be "qualified" in so far as "local circumstances and native customs" render this necessary.

I take this part of the proviso to section 2 of Cap.2 to be concerned with different considerations from those included in "the circumstances of the State and its inhabitants."

I have been referred to no authority on the interpretation of this phrase and can only guess that it is intended to provide some sort of a safeguard against the introduction of a statute which, though generally suitable, may conflict seriously with customs adopted by sections of the community; in which event the statute would be "qualified" so as not to impinge upon that part of the community.

I do not see that any such qualification is required in the case of the 1950 Act, which can apply only to those who have been married under the Marriage Enactment and can be expected to welcome it, even if they hope that they will not have to avail themselves of it.

I therefore find that the Matrimonial Causes Act 1950 is a statute of general application and that it has been in force in the State since April 21, 1951.

By agreement of all parties, there will be no order as to costs.

Order accordingly.

Solicitors: *Choo Chan & Wong; Ibrahim, Chee, Teo, Law & Co.*

UNITED NATIONAL FINANCE LTD. v. INDUSTRIAL RESOURCES LTD.

[O.C.J. (Roberts C.J.) March 17, 18 & 27, 1986]

[Bandar Seri Begawan – Civil Suit No. 70 of 1985]

Hire-purchase – Motorcar – Rival interest of plaintiff and defendant – Defendant neglecting to record its ownership claim – Ownership claim recorded by plaintiff – Estoppel by negligence – Fraud of third party – Assignment – Seizure of car by defendant – Declaration of title to car – Damages – Road Traffic Act (Cap. 68), s.4 – Road Traffic Regulations, 1955, regs. 47 & 48.

The principal question in this hire-purchase case was which of the two parties, *i.e.* the plaintiff or defendant, was to suffer by the fraud of a third party. On August 19, 1983, the defendant and one Martin Loh (hirer) signed a hire-purchase agreement in respect of a new car purchased from a car dealer by the defendant who was legal owner of the car. Loh's name was entered on the registration blue card as owner of the car on May 5, 1984. The defendant, apart from sending an employee to see if the car's blue card was ready for collection, had taken no further steps to protect its interest in the car. The plaintiff became involved in the car when Loh asked it to lend him $30,000. This would be done by the purchase of the car from Loh by the plaintiff, which would hire it to him under a usual hire-purchase agreement. The hire-purchase agreement was executed between Loh and the plaintiff on June 7, 1984. The plaintiff's claim of ownership had been endorsed on the blue card.

Loh assigned his rights, title and interest under the principal agreement to one Ong Kok Kiong, who became owner of the car on the blue card, with the plaintiff's ownership claim recorded. When Loh made no further monthly payments to the defendant after August 1984, the defendant seized the car on December 12, 1985 despite protests by Ong. The plaintiff then sued the defendant for a declaration that the car is its property, for the return of the car or its value, and for damages for conversion and trespass.

Held: (1) the owner of a motor vehicle, who permitted possession and control of it to be passed to another, had a